



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2005

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2005-01735

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219595.

The Texas Department of Criminal Justice (the "department") received a request for information related to a named employee. You claim that the requested information is excepted from disclosure under sections 552.117 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). You inform us that the department received this request on December 7, 2004. Although you timely requested a ruling from this office, you did not claim the applicability of section 552.134 until December 29, 2004. Consequently, you failed to timely raise this exception. However, since sections 552.134 can provide a compelling reason to withhold information from disclosure,

¹To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

we will address the applicability of this exception along with your timely asserted claim under section 552.117. *See Gov't Code § 552.302* (governmental bodies failure to comply with procedural requirements of section 552.301 results in presumption that information at issue is public and must be released unless compelling reason exists to withhold the information).

You assert that section 552.117 of the Government Code is applicable to the personal information of department officers. Section 552.117(a)(3) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former department employees, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(3)*. We note, however, that section 552.117(a)(3) deems information confidential only in order to protect individuals' privacy. Therefore, the requestor has a special right of access pursuant to section 552.023 to her own information that would otherwise be excepted from disclosure to the public under section 552.117(a)(3). *See Gov't Code §§ 552.023*. Thus, the department must release the requestor's information to her.² We have marked the information that pertains to other department employees and must be withheld under section 552.117(a)(3).

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The records at issue pertain to a personnel issue involving interactions among department employees. Although the document mentions inmates confined in a facility operated by the department by name, the submitted information is only in part "about an inmate who is confined in a facility operated by or under a contract with the department." We therefore find that only the names of the inmates and portions of the record we have marked are excepted from disclosure under section 552.134. The remainder of the documents concern only department employees and may not be withheld under section 552.134.

In summary, under section 552.117 of the Government Code, the department must withhold the personal information of current and former department employees that to which the

²We note, however, that if the department receives another request for information from a different requestor, the department should again seek a decision from us before releasing this information to such a requestor. *See Gov't Code §§ 552.301, .302*; Open Records Decision No. 673 (2001).

requestor does not have a right of access. The department must also withhold the marked information about department inmates under section 552.134 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "L. Joseph James". The signature is written in black ink and is positioned above the printed name and title.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 219595

Enc. Submitted documents

c: requestor
(w/o enclosures)